

UNITED STATES OF AMERICA
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

RAYMOND SMITH,

Petitioner,

Case No. 1:05-CV-248

v.

Honorable Richard Alan Enslen

KENNETH McKEE,

Respondent.

**ORDER GRANTING LEAVE TO PROCEED *IN FORMA PAUPERIS* ON APPEAL
AND DENYING CERTIFICATE OF APPEALABILITY**

This is a habeas corpus action brought by a state prisoner pursuant to 28 U.S.C. § 2254, challenging his conviction for first-degree felony murder for which he was sentenced on February 5, 2001, to a term of life imprisonment. On March 26, 2007, the Court entered an Opinion and Final Order dismissing the Petition. The Court also denied Petitioner a certificate of appealability. The Opinion and Final Order followed the Court's *de novo* review of Petitioner's Objections to the Report and Recommendation of the magistrate judge. Petitioner has now filed a Notice of Appeal and a Motion for Certificate of Appealability.

Sixth Circuit Internal Operating Procedure 5.1 provides that a \$450.00 docketing fee and a \$5.00 filing fee must be paid to the district court when a notice of appeal is filed. Petitioner was permitted to proceed before this Court *in forma pauperis*. Pursuant to Rule 24(a) of the Federal Rules of Appellate Procedure, he may continue that status on appeal unless this Court certifies that his appeal is not taken in good faith. Good faith is judged objectively and an appeal is taken in good

faith when it seeks review of an issue which is not frivolous. *Coppedge v. United States*, 369 U.S. 438, 445 (1961). Detailed reasons for dismissal of the Petition were provided in the Report and Recommendation, which was adopted by this Court. The Court finds that Petitioner seeks review of an issue that is not plainly frivolous. Petitioner, therefore, may continue on appeal without payment of the appellate filing fee.

Petitioner has also moved for a certificate of appealability. As set forth above, the Court denied a certificate of appealability in its Final Order adopting the Report and Recommendation. Thus, Petitioner's motion will be denied as moot. Therefore:

IT IS HEREBY ORDERED that Petitioner may proceed on appeal *in forma pauperis*. The Court certifies that the appeal is taken in good faith.

IT IS FURTHER ORDERED that Petitioner's Motion for Certificate of Appealability (Dkt. No. 49) is **DENIED** as moot.

DATED in Kalamazoo, MI:
July 10, 2008

/s/ Richard Alan Enslen
RICHARD ALAN ENSLEN
SENIOR UNITED STATES DISTRICT JUDGE